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IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

BAI BANGURA APPELLANT

AND

MAMADU JALLOH RESPONDENT

CORAM:

Hon. Mrs. Justice S. Bash-Taqi, J.A (Presiding)
Hon. Ms. Justice S. Koroma, JA.
Hon. Mr. Justice E. E. Roberts, J.A.

Barristers

S. M. Sesay, Esq. for the Appellant
A. E. Manly-Spain, Esq. for the Respondent

JUDGMENT DELIVERED ON THE 18TH DAY OF JUNE 2009

BASH-TAQI, JSC.:-

The Respondent in this appeal was the Plaintiff in the High Court action brought by him against the Appellant, then, Defendant, claiming inter alia, (i) a declaration of title to land situate Off Regent Road Lumley Freetown, (ii) damages for trespass and (iii) an injunction etc.

BACKGROUND

The Appellant and Respondent both claim to have bought a piece of land situate at Off Regent Road Lumley Freetown from a common Vendor, one Yorroh T. Bah. The Respondent (Plaintiff) claimed to have bought the land in 1998, and although he did not ask to see Yorroh T. Bah's Conveyance before the purchasing, he caused a search to be conducted at the Administrator General's Office to ascertain that Yorroh T. Bah was the owner of the land. Yorroh T. Bah only gave him a copy of his Conveyance, alleging that the original was missing. He went to the land with a Surveyor and found a shed occupied by one Isatu. Isatu told him that Yorroh Bah gave her permission to utilise the land. Yorroh then introduced Respondent to Isatu as the new owner. The Respondent endorsed Isatu's stay on the land; she paid rent to him. He surveyed the land in 1997and thereafter Yorroh Bah executed his Conveyance dated 4th May 1998, (Exh. "A") which contained a Survey Plan L.S. 1445/97 dated 22nd Sept 1997; the land encloses an area of 0.1032 Acres. In 1999, Isatu told him something concerning the land which made him visit the land, and there, he found the Defendant. He reported the matter to ECOMOG.

The Appellant (the Defendant) on the other hand claimed to have bought the disputed land (two town lots) from Yorroh T. Bah in 1993 for One Million Six Hundred Thousand Leones (Le1,600,000.00). He made an initial deposit of Le 1,500,000.00, leaving a balance of Le 100,000.00 (One Hundred Thousand Leones). Yorroh Bah gave him a receipt dated 4th October 1993, for the land, (Exh. "C"). He went to the land with Yorroh and one Alpha; they met one Isatu, Yorroh Bah's caretaker and he was introduced to her as the new owner; he said he allowed Isatu to remain and continue to look after the land. He surveyed the land on 14th November 1996; his Survey Plan L.S. 2754/96, signed on 17th October 1997 covered an area of 0.206 Acres.

In view of the nature of the Grounds of Appeal, it will be useful at this stage to give details of the procedural steps in the matter up to the time of the Judgement.

The Writ of Summons issued by one Amadu Koroma, Solicitor for the Respondent, was dated 28th September 1998. No appearance was entered by or on behalf of the Appellant. By Notice and Entry of Trial dated 22nd December 1998, Amadu Koroma entered the action for trial in Freetown for Monday 28th day of December 1998. However, the Registry Stamp on the documents evidencing lodgement at the High Court Registry and payment show that the documents were filed on 30th December 1998.

On the 29th October 1999, almost one year after the action was purportedly entered for trial, Solicitors for the Appellant, Betts & Berewa, entered a Conditional Appearance for the Appellant and one month later, on the 29th November 1998, Betts & Berewa filed a Statement of Defence. Subsequently, on a date not stated in the Records, one A. Thomas of Counsel for the Appellant, applied for leave to file a Statement of Defence out of time. Nothing was said about the earlier Defence filed by Betts & Berewa on 29th November 1998. Be that as it may, Counsel for the Respondent did not object to the application. The Judge granted the Appellant leave to deliver and file a Statement of Defence within eight (8) days of the order, and then adjourned the matter to 6th December 1998.

The next time the case was called was not 6th December 1998, but on 23rd March 2000. On that occasion, the Respondent proceeded to open his case by giving oral evidence at the end of which then Judge adjourned the hearing to 5th April 2000. The case came up again before A. B. Rashid, J on 5th April 2000, during which the Respondent completed his evidence-in-chief and was cross-examined by Counsel Thompson for the Appellant. The matter was further adjourned to 17th April 2000, although it was not called on that date.

On 29th June 2000, the Appellant appointed Serry-Kamal & Co. his new Solicitors in place of Betts & Berewa. On 29th November 2000 when the case again came up for hearing, Counsel for both parties were present and by consent, Miss Tucker of Serry Kamal & Co. continued the cross-examination of the Respondent at the end of which the Judge adjourned to 11/12/2000.

The next time the case came up before the Judge was on 8th July 2002. Counsel for the Respondent proceeded to lead his second witness. This was a Representative of the Administrator and Registrar-General and he tendered in evidence the title deeds of the Respondent in respect of the disputed property as Exhibit "B". He was not cross-

examined and the matter was further adjourned to 1st October 2002. There is no record of what transpired on 1st October 2002.

On 24th October 2002, Serry-Kamal & Co applied by Notice of Motion for leave to amend the Appellant's Defence by the addition of a Counter Claim. The Respondent's Counsel was present and took no objection.

On 31st October 2002, the Learned Judge granted the application after which the case was adjourned to 12th November 2002, but no proceedings took place on that adjourned date. On 14th November 2002, Serry-Kamal & Co. filed the amended Defence and Counterclaim on behalf of the Appellant pursuant to the Order of 31st October 2002. The Respondent did not file a Reply and Defence to the Counterclaim. The omission went un-notice. When the case came up for further hearing, Counsel for the Respondent was present, but Counsel for the Appellant was not. Counsel for the Respondent then closed the Plaintiff's case and the matter was adjourned to 24/03/03.

.On 24th March 2003, Counsel for the Appellant was present, but Counsel for the Respondent was not. Miss Tucker for the Appellant (Defendant) opened the Defendant's case by calling the first witness for the Defence; the Representative of the Administrator and Registrar-General who tendered the Appellant's title deeds as Exhibit "C"; the matter was then adjourned to 8th April 2003, but it was not called on the adjourned date, but on 8th May 2003. On this occasion, the Appellant gave oral evidence after which the hearing was adjourned to 27th May 2003. There were a few more adjournments after that, before Counsel closed the case for the Appellant on 10th February 2004.

Counsel Ms Tucker for the Appellant addressed the Court on 2nd March 2004, 18th March 2004 and 21st April 2004, urging the Court to find for the Defendant in his Counter Claim. There was no reference to a defective Notice and Entry of Trial and no one detected the absence of a Reply and Defence to the Appellant's Counterclaim. On 25th June 2004 Mr. Manly-Spain addressed the Court and the Trial Judge reserved his Judgment. On the 17th February 2005 the Learned Trial Judge gave judgment in favour of the Respondent and dismissed the Appellant's Counter-Claim.

In giving Judgment for the Respondent, the Learned Judge had this to say:

> *"From the evidence of the defendant he did not conclude the transaction until 1998. From the evidence on both sides it does not appear that the Plaintiff was aware of any transaction between the defendant and the vendor. The Plaintiff was a purchaser for value without notice; for the plaintiff paid for a piece of land which was conveyed to his as evidenced in Exhibit "B".*

The Learned Judge further went on to hold:

> *"In the absence of a Conveyance between the defendant and the Vendor there was no sale until the 29th October 1998 when Yorroh purportedly conveyed the said land to the defendant. But looking at Exhibit "A" dated 4th May 1998 the Vendor had conveyed the said land to the plaintiff. Therefore as at 29th October 1998 when the vendor purportedly conveyed the land to the Defendant he had no land*

to convey to the defendant. His title has passed earlier to the plaintiff and the plaintiff was then in possession".

It is against this Judgment that the Appellant has now appealed to this Court on the following grounds:

1. The decision is against the weight of the evidence;

2. That there was evidence which clearly showed that the Plaintiff was not a purchaser for value without notice. He met the defendant and tried to purchase the property from the defendant

3. The plaintiff failed to conduct a proper investigation of the Vendor's title. The maxim is "Caveat Emptor"

On 20th November 2007 when the appeal came up for hearing before this panel, Counsel for the Appellant, S. M. Sesay, Esq. sought leave pursuant to Rule 9(5) of the Court of Appeal Rules 1985 to amend the original grounds of appeal (at page 40 of the Records) by the addition of three further grounds. The Notice of Intention to amend filed by Counsel is dated 6th June 2007. Mr. A. E. Manly-Spain did not oppose the application; leave was accordingly granted to Appellant's Counsel to file and serve the amended grounds within seven (7) days of the order. The Court further ordered both Counsel to file and serve their respective skeleton arguments within 10 days after service of the amended grounds of appeal. The hearing was then adjourned to 14th December 2007.

Counsel having filed their respective skeleton arguments, the appeal eventually came up for hearing before this panel on 17th January 2008.

Arguing his appeal Mr. S. M. Sesay referred us to his amended Grounds of Appeal which are:

4. That the whole trial was a nullity because the action was never properly entered for trial;

5. That the matter was heard prematurely;

6. That the Plaintiff did not file a reply and defence to the counterclaim. The pleadings were not closed.

He relied on the submissions in his skeleton arguments. Arguing Grounds 4, & 5, Counsel referred us to the Notice and Entry of Trial at pages 6 & 7 of the Records; both documents which are dated 22nd December 1998, requests for the action to be entered for trial on 28th December 1998. However, he pointed out that the date on the Registry Stamp on the documents is 30th December 1998, not 28th December 1998 which indicates that the documents were in fact lodged at the Court Registry on 30th December 1998. He therefore submitted that the date on which the action was said to have been entered for trail, was not the date on which the documents were filed in the Court Registry. He pointed out that it is only when a document is paid for at the Registry that it takes effect; for this reason, he submitted, the action was not properly entered for trial in accordance

with the provisions of Order 25 Rule 1 – 5 of the then High Court Rules1960; that when the Trial Judge commenced the trial, he assumed that it had been properly entered for trial on 28th December 1998 in accordance with the Rules and pleadings had closed, (see page 34 line 1 of the Records). Counsel pointed out that this was however not the case; he argued that the Respondent having failed to enter the action for trial, the trial ought not to have commenced; alternatively, the trial having commenced without the action being properly entered for trial, the whole trial was a nullity in which case, the Judgment ought to be set aside and the matter sent back to the High Court for a retrial.

Mr. Sesay went on to argue Grounds 1, 2, & 3 together in the event that his Grounds 4 & 5 fail.

In support of his contention that the Respondent was not a bona fide purchaser for value without notice, Counsel referred us to the evidence adduced by both parties at the trial; and submitted it is not disputed that both parties bought the disputed land from the same Vendor; but that there is unchallenged evidence that at the time the Vendor was negotiating the sale of the land with the Respondent, he was also doing the same with the Appellant, from whom he had received part of the purchase price. He relied on Exh "C" and on the evidence at pages 18 & 22 in support of his submission; he stressed that before the Vendor executed the Respondent's Conveyance, the Appellant had already paid him for the same land (see page 22) and had received the Vendor's original title deeds; that when the Respondent did not receive the original title deeds from the Vendor, he should have been put on enquiry that the Vendor may have given them to another Purchaser; that from this evidence alone there was sufficient notice to the Respondent that the Appellant was also negotiating with the Vendor. In view of this evidence, Counsel submitted, the Learned Trial Judge was wrong in his conclusion at page 38 when he said:

> "From the evidence of the defendant he did not conclude the transaction until 1998. From the evidence on both sides it does not appear that the Plaintiff was aware of any transaction between the defendant and the vendor. The Plaintiff was a purchaser for value without notice; for the plaintiff paid for a piece of land which was conveyed to him as evidenced in Exhibit "B".

That at page 22 of the Records there is evidence that the Respondent had gone to see the Appellant accompanied by Saidu Barrie and Mamadu Bah enquiring about the Appellant's dealings with the Vendor for the land; and it was then that Appellant had shown the Respondent the copy of the Vendor's Conveyance. Counsel pointed out futher that the Appellant's rough Survey Plan was already with the Department of Surveys and Land awaiting authentication before the Respondent's transaction with the common Vendor was concluded. To buttress this submission, Counsel asked us to take into account the date on the Appellant's receipt of payment, which is 4th November 1993, and the fact that the Appellant had almost paid the entire purchase price for the land, and the date of the Survey Plan, which is October 1997. He further submitted that the Appellant's Conveyance pre-dates that of the Respondent; and that the consideration stated in Exhibit "C", is the same as that recited in the Conveyance thereby supporting the evidence that the Appellant purchased the land in dispute in 1993. He concluded therefore that the Respondent had sufficient notice of the sale of the land to the Appellant. In the circumstances, he submitted, the Learned Judge was wrong in his conclusion that the Respondent did not have notice.

With respect to Ground 6, that is the omission to file a Reply & Defence to the Appellant's Counterclaim, Mr. Sesay referred the Court of the Order granting the Appellant leave to amend his defence by the addition of a Counterclaim (See page 10 for Defence and page 13 for the order granting leave); Counsel pointed to the absence of a Reply and Defence to the Appellant's counterclaim in the records and submitted that by virtue of this omission, the trial of the action was premature as pleadings had not closed; and that this further renders the trial a nullity.

In support of his various submission Counsel relied on the decision of the **Supreme Court in the case of Osman Thomas Sons & Brothers v Bastone, S C. Civ. App. 7/81**

The short reply to the above argument is that our then High Court Rules are quite clear as to the course of action to be taken in a case where a party fails to file and deliver a pleading. Order 23 Rule 13 is quite clear in the case of a plaintiff who does not deliver a Reply or a Defence to a Counterclaim. It states:

> *" 13. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of facts in the pleading last delivered shall be deemed to have been denied and put in issue".*

Mr. Manly-Spain in his Reply conceded that the Memorandum and Notice of Trial filed were irregular, but submitted that this is not fatal; that a distinction should be made between a matter not having been properly entered for trial, and one that is not entered for trial at all as was the case in **Osman Thomas Sons & Brothers.** He submitted that in the present case the Appellant's complaint is that the action was not properly entered for trial not that it was never entered for trail.

He argued that the irregularity complained of in the present case does not render the trial a nullity. He called in aid Order 50 Rule 1 of the 1960 High Court Rules and submitted that the irregularity could be cured under the provisions of that Rule more so as the Appellant had himself taken several fresh steps including taking part in the proceedings in the High Court and obtaining an Order to amend his Defence, without taking the objection; that the Respondent cannot now complain of the irregularity at this stage. Counsel stressed that since the trial had taken place, and since the Appellant had taken active part in it, the Court should over look the non-compliance and hold that the trial commenced on the basis that the Respondent had complied with all the steps necessary for the matter to go to trial. He pointed out that the form of the Notice and Entry of Trial was never an issue before the Trial Judge and should not be made an issue at this stage.

Replying to the other grounds of appeal, Mr. Manly-Spain pointed out that there is evidence to support the Learned Judge's conclusions; firstly, that Exhibit "B", the Respondent's Conveyance pre-dates that of the Appellant's Exhibit "C". In reply to Mr. Sesay's comments on the evidence at pages 22-23, Mr. Manly-Spain submitted that the Respondent's evidence in cross-examination was that the first time he knew the Appellant was when the matter came before the Court not before that date; he noted further that at the time the common Vendor signed the Appellant's Conveyance, he no

longer had any land to sell consequently the Vendor had no tile to pass to the Appellant. He urged the Court to dismiss the Appeal with costs.

We will first deal with the Appellant's contention that the action was not entered for trial. If, in our opinion, we agree with Learned Counsel on that issue, then that effectively disposes of this appeal and it will not be necessary to consider any of the other grounds.

In order to assist us in coming to a conclusion on that point, it is necessary for us to consider the provisions of Order 25 of the Rules governing Entry and Notice of Trial of an action.

Order 25 Rules 1 – 5 of the High Court Rules 1960 provide as follows:

"1. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial.

2. If the plaintiff does not within 21 days after the close of the pleadings, or within such extended time as the court may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the court to dismiss the action for want of prosecution; and on the hearing of such application, the court may make such other order, and on such terms, as to the court or judge may seem just.

3. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein and the place and day for which it is to be entered for trial. It shall be in the form in use in the High Court of Justice in England on the 1st day of January 1957, with such variations as circumstances may require.
The notice shall also state whether the trial is likely to take half a day or a full day or longer, and, if longer, it shall state how many days the trial is likely to take.

4. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trail; and shall be sufficient in all cases, unless otherwise ordered by the court. Short notice of trial shall be four days' notice, unless otherwise ordered.

5. Notice of trail shall be given before entering the trial, and the trial may be entered notwithstanding that the pleadings are not closed, provided that notice of trial has been given."

Counsel for the Appellant has submitted that the alleged notice and entry of trial filed by the Respondent did not comply with the above Rules. In that regard it will be helpful for us to re-produce the Entry and Notice of Trial that were filed by the Respondent's Solicitor in the High Court Registry as appears at pages 6 & 7 of the Records.

The Memorandum of Entry of Trial reads:

"CC. 285/98 1998 J. NO 29

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: MAMADU JALLOH
20 Glasgow Street
Wilberforce
Freetown Plaintiff

AND

OBAI BANGURA
11, Bombay Lane
Freetown Defendant

Enter this action for Trial for Monday the 28th day of December 1998 at the High Court, Freetown.

DATED THE 22nd DAY OF December 1998

AMADU KOROMA, ESQ
PLAINTIFF'S SOLICITOR

Delivered and filed this 22nd day of December 1998 by AMADU KOROMA ESQ of No. 9 Pademba Road, Freetown Solicitor for the Plaintiff pursuant to the High Court Rules."

The Notice of Entry of Trial reads as follows:

"CC 285/98 1998 J. NO 29
IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: MAMADU JALLOH PLAINTIFF
20, Glasgow Street
Wilberforce
Freetown

AND

OBAI BANGURA DEFENDANT
11 Bombay Lane
Freetown

TAKE NOTICE that I have this day entered this action for Trial before the High Court, Freetown for Monday the 28th day of December 1998

The trial is expected to last for 3(three) days.

AMADU KOROMA ESQ
PLAINTIFF'S SOLICITOR

Delivered and filed this 22nd day of December 1998 by AMADU KOROMA of 9 Pademba Road, Freetown, Solicitor for the Plaintiff pursuant to the High Court Rules."

As already stated, Counsel for the Appellant has submitted that the above documents are defective as they did not comply with Order 25, and that they purport to enter the action for trial on 28th December 1998 when in fact they were lodged at the Registry on 30th December 1998, consequently this renders the trial before the Learned Judge a nullity, and since he purported to hear the action on a non-existent entry of trial there was no trial. Mr. Manly-Spain conceded that the action was not properly entered for trial, he submitted however that the omission is merely an irregularity not fatal to the proceedings; that it can be cured or waived under Order 50 of the Rules, especially so as Counsel for the Appellant has taken several fresh steps after the irregularity complained of occurred.

The irregularity having been conceded to by Counsel for the Respondent, the only question which we have to determine is whether this is an irregularity that can it be waived under the Non-Compliance Rules?

Order 50 Rule 1 & 2 of the 1960 High Court Rules provide:

1. "Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court shall think fit."

2. No application to set aside any proceedings for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity."

The above Order is quite clear. The Court has a discretion not order any proceedings void in appropriate circumstances for non-compliance with any of the rules or any rule of practice in force.

Counsel for the Appellant relied on the decision of Livesey Luke C. J. in the case of **Osman Thomas & Bros v Bastone Falkenger (Export) Ltd**, supra in support of his submission that the trial was a nullity. However, the circumstances in the Osman Thomas' case are quite different from those in the present case. In that case the action was never entered for trial. It was only during the arguments in the Supreme Court on appeal by Osman Thomas against the Court of Appeal Judgment reversing the High Court Judgment given in his favour that it was discovered that not only was a Defence not filed by or on behalf of Osman Thomas, but that the action had not been entered for trial in accordance with the Rules.

The Supreme Court, Livesey Luke C. J. held in that case that it is only after an action to which a Defence has been delivered and filed has been entered for trial that it is ready for trial by entering it on the Cause List. His Lordship went on to hold that even if a Defence had been delivered and filed, the action was not ripe for hearing because the action **was never entered for trial. (emphasis added)**

It is plain that the circumstances in that case are quite different from the present case; the complaint here is not that the action was never entered for trial, but that it was not properly entered for trial in the sense that the form of the Notice and Entry of Trial did not comply with requirements of Order 25 of the then High Court Rules. A defence and Counter claim had been delivered and filed on behalf of the Appellant pursuant to an Order of the Trial Judge and the matter had been entered for trial albeit the form of the entry and notice of trial used did not comply with the express provision of the rules.

We also note that the Appellant, had taken fresh steps in the trial including having taken part in the proceedings before the Court without taking the objection, and he is therefore deemed to have waived the irregularity and he cannot now be heard to say that the trial was a nullity or that it was irregular. Furthermore, the application to set aside the proceedings for irregularity was not made within a reasonable time. In fact over a year has elapsed since the purported entry of trial and the Appellant having taken fresh steps including taking part in the trial cannot now be heard to say the trial is a nullity. And Rule 2 of Order 50 is quite clear on this point.ZZ

We agree with the submissions of Learned Counsel for the Respondent. The irregularity in this case in not so fatal as to render the proceedings void. We find that the action was entered for trial though not in strict compliance with the provisions of Order 25 and it does not matter that the pleadings were not closed before the purported entry of trial; the important issue is that notice of trial was given. (See Rule 5 supra). In the circumstances, we will dismiss Grounds 4 and 5 of the appeal.

Counsel for the Appellant argued Grounds 1, 2 & 3 together.

His complaint in respect of these grounds is that Trial Judge was wrong to have found the Respondent was a bona fide purchaser for value of the disputed land when there was abundant evidence that the Respondent was aware that at the time he was negotiating for the land the with the common Vendor, the Appellant was also in negotiations with the Vendor for the same land, and had in fact paid part of the purchase price for the land to the Vendor. He referred us to pieces of evidence appearing at pages 18, 20, to 23 of the Records to buttress his submissions.

It is useful at this stage to consider two principles of law which appear to be germane to this action. The first is that where the parties to an action for a declaration of title to a disputed land rely on the respective deeds of Conveyance, the Court will confine itself in deciding the issue on the documentary title only. **See Ven Thompson and Masu v Cole 1968-69 ALR (SL) 331.** The other principle of law is one which presupposes that a person whose deed of Conveyance to a land in dispute is registered earlier than another laying claim to the same land has a better claim to ownership by virtue of the earlier registration (See Sec 4 of the governing the Registration of Deeds CAP 256 Law of Sierra Leone). The law is that every deed, contract, or conveyance, executed after 9th February 1857, so far as regards any land to be thereby affected, shall take effect as against other deeds affecting the same land from the date of its registration.

In his Judgment at pages 27 – 39 of the Records, the Learned Trial Judge reviewed the entire evidence adduced before him.

Based on that evidence it is not disputed that both parties bought the same land from one Yorroh Bah, who had since disappeared and was not available at the time of the hearing. In the action both parties are claiming a declaration of title to the land in dispute. There are numerous authorities on the point that in a claim for declaration of title the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant's title. The principle of law is the same in respect of a defendant who counterclaims for a declaration of title, namely, that he must also succeed on the strength of his own title and not on the weakness of the Plaintiff's title. **See Kodilinge v. Odu 1935 1 WACA 336; Mansaray v Williams 1968-69 ALR SL 326; Seymour Wilson v Musa Abess Supreme Court 5/79 unreported.**

In giving judgment in favour of the Respondent the Learned Trial Judge had this to say:

> *"They both claimed to have bought from the same Vendor one Yorroh Bah who cannot now be traced. Looking at Exhibit A and Exhibit B respectively they were both executed by the same Vendor Yorroh T. Bah. The plaintiff is in possession of the said [land] and has been so since 1998".*

The above facts were not disputed by the Appellant's Counsel.

The Trial Judge put the above evidence side by side that of the Appellant's, he said:

> *"The defendant [Appellant] claim to have made part payment in 1993 [to] the said Yorroh Bah as evidenced in a receipt in Exhibit C dated 10th October 1993. Looking at Exhibit C it does not state where the land is situated. It only states "Received from Bai Bangura the sum of One Million and Six Hundred Thousand Leones payment for two Town lots" but it does not say where the land is situated. From the evidence of the defendant he did not conclude the transaction until 1998. From the evidence on both sides it does not appear that the plaintiff was aware of any transaction between the defendant and the Vendor."*

Therefore even if it is conceded that the Appellant paid for the disputed land 1993 as stated in Exh. "C", the transaction between the Appellant and the Vendor was not completed until 29th October 1998, when the Vendor signed his Conveyance evidencing the sale; by this time the Vendor had already completed the sale of the land had executed the Respondent's Conveyance and he had registered it and gone into possession before the transaction with the Appellant was concluded. There is no evidence to suggest that the Respondent knew that the transaction between the Vendor and the Appellant was completed when the Vendor executed his Conveyance on 4th May 1998.

This was what the Learned Judge was saying when he concluded:

> *"The Plaintiff was a purchaser for value without Notice for plaintiff paid for a piece of land which was conveyed to him as evidenced in Exhibit B.*
> *In the absence of a Conveyance between the defendant and the Vendor there was no sale until the 29th October 1998 when the said Yorroh purportedly conveyed the said land to the defendant. But looking at Exhibit A dated 4th May 1998 the Vendor had conveyed the said land to the plaintiff. Therefore as at 29th October 1998, when the Vendor purportedly conveyed the land to the Defendant he had no*

land to convey to the defendant. His title had passed earlier on to the plaintiff and the plaintiff was then in possession."

The above passage from the Trial Judge's judgment disputes Counsel's contention that the Trial Judge failed to consider that the Appellant and the common Vendor were in negotiations for the same land at the same time that the common Vendor was negotiating the sale of the land with the Respondent. In fact the above passages confirm that the trial Judge did consider that fact, but concluded that the sale to the Respondent was concluded before the sale to the Appellant. It is therefore clear that the Appellant's claim for a declaration was not supported by the oral evidence or by the documentary evidence. The law is that the onus is on the party claiming for a declaration to satisfy the court that he is entitled to such a declaration on the strength of his own title and not on the weakness of the other's title; if that onus is not discharged the weakness of the other's title will not help him.

The Trial Judge was not satisfied that the Appellant discharged the onus on him to satisfy the Court that he is entitled on the evidence brought in support of his counterclaim for a declaration of title to the disputed land.

On the question of evaluation of the evidence, it is an established principle of law that an Appellate Court will not readily disturb the findings of facts of the Trial Court. Except where the facts do not support the findings of the Trial Court or the findings have violently contravened a principle of law, or the findings are contrary to the facts or the facts have not been evaluated. Where the Court's belief of witnesses is supported by any evidence however slight an appellate court will not normally interfere.

In the case of **Seymour Wilson v Musa Abess SC App. No 5/79 (unreported)** His **Lordship Livesey Luke C. J. said at page 67-68** on the question of evaluation of evidence by an appellate court:

"There is no doubt that an appellate Court has power to evaluate the evidence led in the Court below to reach it own conclusion, and in a suitable case, to reverse the finding of fact of the trial judge. But these powers are exercisable on well settled principles, and an appellate Court will not disturb the findings of fact of a trial judge unless these principles are applicable. (and citing Thomas v Thomas (1947) A. C. 484 he said "the appellate court is, however free to reverse his conclusions if the grounds given by him, therefore, are unsatisfactory by reason of material inconsistencies or in accuracies, or if it appears unmistakeably from the evidence that in reaching them he has not taken proper advantage of having seen and heard the witnesses, or has failed to appreciate the weight and bearing of circumstances admitted or proved, (he went on. His Lordship went to say citing Benmax vs Austin Motors Co. Ltd (1955) 1 All ER 326 per Lord Reid at p. 329 said: -

"but in cases where there is no question of the credibility or reliability of witnesses, and in cases where the point in dispute is the proper inference to be drawn from proved facts, an Appeal Court is generally in as good position to evaluate the evidence as the trial Judge, and ought not to shrink from that task, thought it ought of course, to give weight to his opinion"

In this case there is no question of the credibility or reliability of witnesses and we have reviewed the entire evidence carefully. We hold that there was enough evidence before the Court to justify the conclusions reached by the Trial Judge that on a balance of probability the Appellant failed to establish that he is the owner of the land situate lying and being Off Regent Road Lumley Freetown, and he was also right in awarding a declaration of title to the Respondent..

In view of what we have already said we find no merits in the Appellant's Grounds of Appeal and the same are hereby dismissed with costs to the Respondent such costs to be taxed.

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HON. MRS S BASH-TAQI, JSC

I AGREE.....

HON MS S KOROMA, JSC

I AGREE.....

HON MR JUSTICE E. E. ROBERTS, JA